

**REMARKS**

Claims 1-20 are pending in the application.

Claims 1-20 have been rejected.

Claims 1, 8, and 16 have been amended as set forth herein.

Claims 1-20 remain pending in this application.

Reconsideration of the claims is respectfully requested.

The Applicant has made the arguments set forth above in order to place this Application in condition for allowance. In the alternative, the Applicant has made the amendments and arguments to properly frame the issues for appeal. In this Response, the Applicant makes no admission concerning any now moot rejection or objection, and affirmatively denies any position, statement or averment of the Examiner that was not specifically addressed herein.

**I. CLAIM REJECTION UNDER 35 U.S.C. §102**

Claims 1-3, 7-10, 14 and 16 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No.6,968,192 to *Longoni*, hereinafter “Longoni”. This rejection is respectfully traversed.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131, p. 2100-67 (8<sup>th</sup> ed., rev. 5, August 2006) (*citing In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990)). Anticipation is only shown where each and every

limitation of the claimed invention is found in a single prior art reference. *Id.* (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)).

Amended Claim 1 comprises unique and novel elements, including those elements emphasized below:

1. (Currently Amended) For use in a wireless network comprising a plurality of wireless communication devices, an interrogating state machine comprising:

a server status store operable to store current server status information for each of a plurality of servers, the current server status information for each server comprising load information for the server and capability information for each server; and

a server assigner operable to collect server status information from the servers, provide triggers to the servers, and to store the server status information in the server status store as current server status information, and to assign one of the servers to host one of the wireless communication devices based on the current server status information, wherein the triggers provided to the servers comprise information related to instructions on *under what conditions* to provide the interrogating state machine with updated server status information. [Emphasis Added]

Applicant respectfully submits that the element of "under what conditions provide the interrogating state machine for the updated server status information" is not taught, suggested, or anticipated by the prior art of record. Applicant amended claim 1 to clarify that the triggers used to transmit information to the interrogating state machine are not necessarily time-dependent. As discussed in the specification, as files, the interrogating state machine may set a predetermined threshold, such as load requirements, for which the server is to provide information to the interrogating state machine. This is in contrast to the prior art of record which only uses

predetermined time iterations in order to decide when to transmit information relating to a particular server. As discussed in column 5, lines 29-32, the triggers of Logoni are both time-dependent and pre-programmed. In contrast, the state machine of claim one provides the triggers to the server. These triggers are executed by the server after they have been received. The specific parameters of the triggers may vary based upon never conditions, availability, or any other factor known to one skilled in the art. Applicant therefore respectfully submits that the part of record did not teach, suggest, or anticipate each and every element of claim 1.

Claims 8 and 16 have been similarly amended. Claims 2-7, 9-15, and 17-20 depend directly or in directly from claims 1, 8, 16. Therefore Applicant respectfully submits the claims 1 through 20 are patentable for the reasons stated above.

Accordingly, the Applicant respectfully requests the §102 rejection with respect to Claim . 1-3, 7-10, 14 and 16, and its dependent claims, be withdrawn.

## **II. CLAIM REJECTION UNDER 35 U.S.C. §103**

Claim 15 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Longoni. The Applicant respectfully traverses the rejection.

Claims 5, 6, 12, 13 and 17-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Longoni in view of U.S. Patent Application Publication No. 2003/02106694 to *Jayaraman, et al.*, hereinafter “Jayaraman”. The Applicant respectfully traverses the rejection.

Claims 4 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Longoni in view of what the Office Action characterizes as “the admitted prior art, APA, of Shih”, hereinafter referred to as “APA”. The Applicant respectfully traverses the rejection.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142, p. 2100-125 (8th ed. rev. 5, August 2006). Absent such a *prima facie* case, the Applicant is under no obligation to produce evidence of nonobviousness. *Id.* To establish a *prima facie* case of obviousness, three basic criteria must be met: *Id.* First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *Id.* Second, there must be a reasonable expectation of success. *Id.* Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant’s disclosure. *Id.*

Claim 4 depends directly or indirectly from Claim 1 and incorporates all of the novel and unique elements disclosed therein. Claims 11, 12, 13, and 15 depend directly or indirectly from Claim 8 and incorporates all of the novel and unique elements disclosed therein. Claims 17 to 20 depend directly or indirectly from independent Claim 16 and incorporates all of the novel and unique elements disclosed therein. Applicant respects to submit that each of these claims is patentable for the reason stated above.

Accordingly, the Applicant respectfully requests the §103 rejection with respect to Claims 1, 5, 6, 12, 13 and 17-20 be withdrawn.

CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining claims in the Application are in condition for allowance, and respectfully requests that this Application be passed to issue.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *jmockler@munckcarter.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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